

Comments and Responses on ARC 6928B
Ban on Smoking in Child Care Facilities
Received August 6, 2008

The following persons and organizations provided written comments, which are included in the summary below:

Vickie L. Augustine, registered provider
Micki Benjamin, registered provider
Mary Cameron, registered provider
Sue Dailey, registered provider, Ottumwa
Jeffrey Dodds, registered provider, Coralville
Jill Dodds, registered provider, Coralville
Karen Elsbernd, registered provider, Waterloo
Gloria, registered provider
Jill Jay, registered provider, Davenport
Deanne Johll, registered provider
Melissa Lunsford, registered provider
Yvonne Mathis-Joiner, registered provider
Kelly Matthews, registered provider
Alison Miller, registered provider
Elizabeth Novak, registered provider
Kathy O'Neill, registered provider, Dubuque
Janet Peterson, registered provider, Davenport
Kim Richman, registered provider
Kathy Schwitzer, registered provider, Davenport
JoAnne Smith, registered provider, Cedar Rapids
Denise Tapscott, nationally accredited provider, Des Moines
Matthew Tapscott, nationally accredited provider, Des Moines
Anne Wall, registered provider

Infringement on Private Use

COMMENT: I am a quality caregiver who is concerned with the proposal of the Rule to extend the New Non-smoking Law to mean that "smoking is never allowed in the outdoor play space" (the backyard) even when childcare children are not present.

I am a non-smoker and have a non-smoking home. As a care provider, I totally believe that I have an obligation to provide the children in my care a very healthy environment. Personally, I support the Law that does not allow smoking in child development homes (or any childcare facilities) at anytime. There is abundant research on the lingering effects of not only second-hand smoke, but also third-hand smoke on children's health.

However, this is the problem. These are indeed also our homes and these areas are outdoor areas. To indicate that we must ensure that no one is allowed to smoke in our "time-off" goes a bit too far. This shows no consideration nor respect for my personal time off or for my privacy. .

...I would like to first be provided with some documented current research that supports the need for such a Rule. (I do understand why indoors it would be necessary because third-hand smoke would linger and would not dissipate. As you know, this would not be the case outdoors in our own backyards.) Could you provide me with the research that supports your decision to propose this Rule?

I am an advocate for children and families. ... However, I feel like this is a matter of basic human rights. These are our homes. In no other state is there current legislation that around the clock, even when no children are present, the childcare provider homeowner must be responsible for ensuring that no other human (friend or unknown stranger,) smokes on the outdoor backyard property. This is both too much responsibility and simply unnecessary.

Most of us care providers are burdened with 70 hour plus work weeks with little recognition or economic gain. We do it because we are motivated to make a difference in the profession and in the field. We care greatly about children and families. Whenever another burden like this is added, it makes our jobs that much more difficult. Please reconsider the revision of this Rule and send the research for it's validation and it's proposal to me for my review. I, and others in my field want to do (and will continue doing) what's best practice for children. We are just concerned that we may be crossing lines unnecessarily. (Richman)

COMMENT: I do not agree with the no smoking or use of tobacco on off hours... We usually have company on the weekends and sometimes evenings. I do not feel comfortable telling our guests that they can not have the freedom of choice to use tobacco. I do have an ashtray outside for their use. Most people that chew, have a container with them. No one ever smokes in the house. I am not in favor of this decision that is being made for us in our home on my off hours. This is carrying it a little too far in my opinion. (Augustine)

COMMENT: I do entertain on occasion in my home and feel it is my choice if a friend is allowed to smoke outside or not. We have an occasional bon fire that creates more smoke than a couple of people might with a cigar or cigarette. (Keeping in mind I really do not understand why someone would smoke in the first place.) But, it is after hours, no children are present, and we are outside. The smoke will have dissipated long before children would return. (Cameron)

COMMENT: Our liberties we prize, our rights we will maintain. Sound familiar? Google it. While I, as a Child Development Home Provider, find the new clean air act law somewhat flawed, I find the proposed rule by the Department of Human Services to be nothing short of imbecilic.

We have a regulation that clearly states that providers are not allowed to smoke in their home during hours of operation. So far so good. Who would argue the dangers of smoking or second hand smoke? Certainly not me.

While I applaud the law and past regulation that clearly and rightly aims to protect Iowa's children from the harmful effects of smoking, I firmly believe that someone at the Department of Human Services has lost sense of what the intent of this new law means. I cannot believe that our legislators intended the law to completely eliminate any thought that a provider would have any property rights.

Subrule 109.10(11) states: Smoking and the use of tobacco products shall be prohibited in the center, outdoor play area and in the center operated vehicle.

Subrule 110.5(1) states: Smoking and the use of tobacco products shall be prohibited in areas that MAY be used by children receiving care in the home, in the outdoor play area, and in any vehicle in which children receiving care in the home are transported.

So let me get this straight. My legislators created a law that has made it illegal to ever smoke in MY house. The house I built, the house I pay taxes on. Can't smoke in it ever. I'm not caring for kids on the weekend or at night or on a holiday, but I still can't smoke in it because I'm a child care provider. OK, I don't like it but I can live with it for Iowa's children.

Then along comes someone at the DHS, who creates a rule that says that's not good enough. No, we must protect children outside in the open air too. According to the DHS if a child might play in an area, then my friends, family or I can't smoke there.

But here's the problem, the children in my care play mostly in my fenced in back yard on my commercial playground equipment. If I have friends or family over on the weekend for BBQ no one can smoke, it's not my backyard anymore. Sometimes we go to the front of the house, so the children can ride tricycles, pedal cars, wagons and cozy coupes. Not to mention they are picked up and dropped off there. No one can smoke there either. It's not my front yard anymore. You see, in home child care, the children MAY be everywhere. So by creating this rule you will make it illegal to smoke anywhere on my property. When this happens it seems to me to smack of taking away my LIBERTY to choose to smoke and my RIGHTS as a property owner. These things I PRIZE and I will fight to MAINTAIN.

I find it appalling that the State of Iowa continues to create "feel good" laws and regulations while ignoring that at least half the children in child care are in unregulated and unregistered homes. It is disappointing that the DHS continues to disrespect and ignore the very stakeholders who do this work and are not willing to have honest conversations to improve the lives of Iowa's children. (Jeff Dodds)

COMMENT: The state of Iowa seal and flag proclaim: "Our liberties we prize and our rights we will maintain."

Research states that motto, passed by the state's first Legislature in 1847, is the only one in America to uphold the Bill of Rights. Unlike other state statutes, Iowa's motto is noted in the section title of the Iowa Code, Title 1, Subtitle 1, Chapter 1A, Section 1A-1.

My liberties and my rights are in jeopardy!

The proposed rule by the Department of Human Services which attempts to dictate what can happen in a child care provider's home - *a private citizen's home* - during non-business hours, when child care children are not present, and outside of the home, is completely mind boggling to me. How dare you attempt to impose rules that clearly infringe on individual rights!

I have been speaking with members of the Legislature. Every single one of them state that the DHS proposed rule was NEVER the intent of the law.

As professionals, our priority is always the children in our care. We agree that second hand smoke is unhealthy and obviously support the law prohibiting smoking around children. But

for you to try to pass judgment on a visiting grandmother who goes out to smoke in the garage or on a family celebration where several of the guys decide to have a cigar together in the back yard, is inexcusable. You are stepping way over the line.

Clearly- this energy could be better utilized by directing it toward actually regulating who is providing care to the children of Iowa. Try regulating by Mandatory Registration and Licensure instead of regulating family members.

"Our liberties we prize and our rights we will maintain." The proposed rule must be withdrawn. (Jill Dodds)

COMMENT: DHS has every right to protect the children while in the care of daycare. But, when there is no children present, we have the right to do what ever we want in our home. After our work day is done, we have a right to our privacy in our home. (Gloria)

COMMENT: I do not have a problem with no smoking in my home (even 24/7), but don't understand why visitors can not smoke outside at my home when the children are not present. It doesn't exactly contaminate the air outside so that the children will breath it next time they are out. (Jay)

COMMENT: I have been a non smoker for over 20 years now, and I have mixed feelings about this new non smoking law for Childcare homes. **IT HAS BECOME A SAD DAY WHEN WE LET GOVERNMENT DICTATE WHAT WE ARE ALLOWED TO DO IN OUR OWN HOMES WHEN WE ARE NOT PROVIDING CHILDCARE.** I understand and agree with the non smoking law in a childcare home during the hours children are being cared for. But to tell a provider they can't smoke in their own home when they are not providing childcare, such as nights and weekends is **MORALLY WRONG.** To add the outside area/yard goes too far!! I understand the research on the lingering effects of smoking on children's health and adults, but I feel the true danger is the breathing in of the second hand smoke. Yes, there is residue on you furniture and carpet, but that is where the responsibility of the parents comes into effect. It should be the parents responsibility and decision to bring their child to a provider that they know smokes in their home after daycare hours, such as nights and weekends.

I think the law as no smoking in childcare homes 24/7 could be acceptable to smoking providers. I feel that by adding the new rule of no smoking in outside area/yards could cause good quality childcare providers to quit providing childcare. **THAT WOULD NOT BE IN THE BEST INTEREST OF THE CHILDREN!!** (Johll)

COMMENT: I think if you do not have children in are care then we should be able to smoke or do what ever we would like as long as we do not have any children in are care. As a day care provider we should have rights and they should not take are rights away just because they feel like they are doing the right thing. (Lunsford)

COMMENT: I really hope you will reconsider your idea of the smoking ban to include the outside premises of the home for daycare providers during off hours. I feel you are crossing a line with our civil rights. I am all aboard on the smoking ban in the house and in vehicles where children are present. I do not smoke and I am not happier about no smoking in buildings. Most public and private places do not allow proper ventilation.

But stretching this to the outside during non business hours is violating my civil rights. Unless you are making everyone who contracts with you, employees and you are following the same guidelines then these rules should be revisited. (Mathis-Joiner)

COMMENT: As a registered child care provider, I am in support of banning smoking in the homes while children are in the home and also when children are not in the home, due to second hand smoke concerns. I support restricting smoking in areas that children use for play, unless smoking trash (butts and such) are removed *immediately*.

I am against any ban of smoking on outdoor space/land that is not used for child care purposes (for example, banning smoking in the front yard when only the back yard is used for child care outdoor play). We must have the right to have portions of our house & property which are not used for business available to us for our own private use. (Matthews)

COMMENT: Just wanted to let you know that I think it is RIDICULOUS that you try to regulate my outside space even when daycare children are not present!! What early childhood research supports this proposed rule?? This still is my home and what I do outside in my yard after daycare hours is a total invasion of my rights!!!!!!!!!!!!!! Don't my husband and I have rights to do what we want in our yard after daycare hours and on weekends?????????? (Miller)

COMMENT: I believe the No Smoking Act is a good for everyone's health. As a Child Development Home provider I do not have a problem with posting a No Smoking sign in my home. I haven't allowed smoking in my home for over 20 years. It is written in my child care policies that parents may not smoke in home. I do however feel it is too much to ask that no one smoke outside the home when children are not present. As providers we do have family gatherings and at times people do smoke. My family has always been respectful when it comes to smoking in my home or if the children are present outside. When it comes to the outside area of our homes I feel it should say 'when children are present'. (Novak)

COMMENT: This is ridiculous. I am a smoker but DHS should not be able to mandate whether or not I smoke on my own property after hours. I do not smoke around my daycare children but I do go out to my detached garage, stand in the doorway and have a cigarette when the kids are outside playing. This is our own private property not the states and therefore the state should not be able to regulate what happens after hours. (Benjamin)

COMMENT: I am against the smoking ban rules as they apply to child care homes. Homes are increasingly being scrutinized and burdened with frustrating rules that do not improve quality of care. The latest rules connected to the smoking ban are a case in point.

A family member in a child care home should be able to use a portion of the outside yard that is not used by children for smoking. Smoking is legal and if someone can engage in this legal activity without it interfering with child care activities & safety, there should be no reason to disallow it.

There are far more serious rules that are being ignored by low quality homes (the majority) and that are not being enforced such as being over-capacity and using unapproved substitutes (generally family members). It's time to stop adding rules that impact homes that are already

striving for quality, and start looking at rules for state agencies that improve safety across the board. (Peterson)

COMMENT: I have not allowed smoking in my home for many, many years and have always posted this information in my home. I also have not allowed smoking in the van that I transport children in. However, on weekends and after working hours during the week, I have allowed visitors to smoke in my yard. They must dispose of their cigarettes in a bucket containing sand which I later dispose of and are never allowed to leave debris in the yard. I am not a smoker and do not care for the nasty habit, however, I feel that allowing friends and relatives to smoke in my yard during non-working hours is not a health threat to the children in my care or to me. Therefore, it is going to be very difficult for me to abide by this rule.

I applaud the state of Iowa for showing concern for the children's and my health but I believe they have stretched the rule a little too far when they include the outdoors during non-working hours especially since they allow smoking in casinos where the air is so thick I can barely see sometimes! (Schwitzer)

COMMENT: Overwhelmingly the Registered providers we have spoken with support the current Child Development Home regulation which disallows smoking in childcare homes. Also, most support the new Smokefree Air Law which prohibits smoking anywhere inside a childcare facility at anytime. Providers who support this practice know it is *Best Practice* for the well-being of children.

However, the DHS Rule proposal that smoking is never allowed, outside of the facility, even when childcare children are not present is, most people are saying, reaching too far into providers private time and space. Even smoke-free homes like ours are voicing strong concern at the reach of this DHS proposal. What early childhood *Best Practice* research indicates the need for such a rule?

As Early Childhood trainers, when we teach, we state, "childcare providers have chosen to utilize their private homes as businesses designed to serve Iowa's children and their working families and therefore we are held to a higher standard than are strictly private homes." The state, in good faith, must work to better understand this unique arrangement and that we are still, when not in business use, private homes. Most Iowa families choose family child care for this reason - they like their children cared for in home environments. Quality providers support early childhood *Best Practices* for this reason. This Rule proposal goes too far into providers private, non-working time.

Instead of a rule or regulation which is unenforceable, and in the scheme of things does nothing to truly improve Iowa's childcare system, we must be working collectively on issues we can enforce: meaningful mandatory registration or licensure of all childcare facilities for example. Increased funding to pay livable-wage reimbursement rates and provides for additional spot-checks and QRS stipends that truly reflect a providers professional commitment. Just to name a few.

Creating an unenforceable "complaint Rule" like this places Registered providers, already on-board to meet state standards, in a very uncomfortable situation in the privacy of their own homes, on their own time. At best this is a distraction from the enforceable improvements that are absolutely necessary to truly improve our states childcare delivery system which the Department of Human Services oversees. (Tapscott & Tapscott)

COMMENT: This may sound strange coming from a non-smoker, however, I do not agree with the upcoming changes to the policy stating that there shall be no smoking in a home based day care indoors, outside, or in a vehicle used to transport children when children are not in care. Smoking should however, be banned in all of these aspects when children are present. But, in the home based facility, off hours are still a private individual's home and should therefore not be regulated by the state. I personally feel that if this policy continues, it will be a step backwards in offering quality care for children by forcing providers who follow the law and really care about offering quality care for children, (Wall)

COMMENT: My thoughts on not being able to smoke or allow my guests and family to smoke in my own home 24/7. Well....where to start!!! I am angry. My husband is angry. I run a business in my home for 12 hours a day 6am to 6pm. After that time it is OUR HOME, not a business. What we do in OUR HOME, on our own time is no one's business but ours. I do not allow anyone who might visit or be here to help me to smoke while MY HOME is being used as a business. If you think I am going to put a big red sign on all my doors about not smoking you are sadly mistaken. I am an adult. I am quite capable of asking anyone with a cigarette to extinguish it before entering my home during business hours. My daycare children's parents all know I smoke when their children aren't here and none of them have ever complained about my house smelling like smoke. I do not smoke in MY HOME while the children are here and so far my husband goes to the garage to smoke. Now you are saying he has to go to the street or the neighbors yard to smoke? Yeah right like that's going to happen. As for me I guess I would just have to take the baby monitor during naptime and go to the street or neighbors yard instead of standing on my own deck where I can see and hear the kids sleeping? Is this what you had in mind? My husband works hard and makes the payment for this home and he does not appreciate being told what he can do in his own home either. He is a truck driver and is only home about 6 days per month. Now you not only tell us what to do during business hours but are trying to control our own time and space also?

This has gone too far now. I don't believe these rules were thought out very well. In the end they could affect children in a very negative way. I am quite capable of getting a job and making more money than I do at my daycare business. I do this because it is what I love to do. I love watching the children in my care grow and develop into wonderful, smart, little people. But I know that my husband and I will not go along with these new rules and I guess that will mean one less daycare provider in Iowa. After reading some of the other letters written by people who do daycare who are non-smokers you might be losing some of them also just because of the principle of the rule. My time and home are mine. My husband said that if you would like to make our mortgage payment, he would go along with your new rules.

I would like you personally (whoever is reading this) to consider being told that you can't do something that you and/or your spouse like to do in your own home. i.e. Having a glass of wine with dinner, letting your pet live in the house, painting your walls, or using fragrances. How would you like it if someone told you that you can't do that anymore or you would lose your job? It is my personal opinion that the rules that are in place already are adequate. I have discussed this with a lot of people who are non-smokers (including the parents of my daycare children) who also agree that this is just too invasive. (Dailey)

RESPONSE: For many years the Department of Human Services has had child care regulations prohibiting smoking and the use of tobacco during hours of operation. Current rule 110.5(1)“o” states:

o. Smoking and the use of tobacco products shall be prohibited in areas that may be used by children receiving care in the home, in the outdoor play area, and in any vehicle in which children receiving care in the home are transported during the home’s hours of operation.

Iowa’s Smokefree Air Act follows the lead of the Pro-Children Act of 1994, Public Law 103-227, to protect young children from the serious health hazards of second-hand smoke. Iowa’s youngest citizens spend most of their days in child care. The Iowa Legislature intentionally included licensed, registered, and non-registered child care programs in this smoking ban. And the Smokefree Air Act bans smoking 24 hours a day, 7 days per week.

Iowa child care business categories regulated by the Department of Human Services include licensed centers, child development homes, and child care homes receiving subsidy. The Smokefree Air Act uses the Department’s definitions of child care facilities (licensed centers and registered homes) and child care homes (unregistered). Because it is important for children to play outdoors daily, the Department requires programs to have designated outdoor play areas and considers that to be an extension of the facility and learning environment.

Through additional legal interpretation of the Smokefree Air Act, the Department of Public Health has concluded that the child care building and vehicle are covered by the law. However, the Department of Public Health does not interpret the outdoor play area of child care facilities and child care homes to be specifically included in the Act (as it does for school playgrounds).

To protect children outside, the Department of Human Services will prohibit smoking and tobacco use in the outdoor play area during hours of operation of licensed and registered child care facilities and child care homes receiving subsidy.

Signs

COMMENT: I for one am a nonsmoker, always have been and detest smoke around me especially when I am dinning out. But, I do child care in my home and would like it to remain looking like a home and not a public facility. My business already has its toll on my home but to add signs on my doors would look tacky. This is my home! In the past 10 years I have never had anyone smoke in it or even ask to. I feel it is unnecessary to post signs to uphold the new policy. (Cameron)

COMMENT: I do not smoke nor do I allow smoking in my home, but I also feel that we should not have to have a no-smoking sign at each entrance of our home. We are a home first and a business second. (Elsbernd)

COMMENT: I am very concerned about the no smoking policies that have been placed on child development homes. My home is MY HOME and you are making it a public business. I do not think I should have to post the ugly non-smoking signs on the front of my new home that I just purchased. It is a very upscale neighborhood and I don't think the neighbors will appreciate such a sign on my door. As long as I communicate to my child care parents and friends that no one is allowed to smoke in my home, I don't see why I should be posting the signs. I don't just let strangers walk in an order lunch or a drink. (Jay)

COMMENT: I do not like that we are required to post No Smoking signs on all of our entrances to our home. IT IS OUR HOME plus my place of business as a registered child care provider. I have no problem with the smoking ban-- it was too long in coming. I have no problem posting a sign in my place of business, but I do not think I should be required to post a NO Smoking sign on all my entrances to my HOME! (O'Neill)

COMMENT: Requiring signage in private homes is an extra step that is not necessary and takes away from the home environment that parents seek. The home environment offers a secure, flexible, and stable care situation for small children. To take away from that is a dis-service to children. The people entering a child care home are the same parents, children and family members that enter each day; so there is not need to post no-smoking signs at each entrance and in a vehicle(s). In a public place with high traffic, it is a necessary reminder - but not in a child care home. There are several postings that are required and serve very logical purposes for added safety such as emergency plans and phone numbers.

This rule is only enforceable for those providers who are already going above and beyond for quality. A DHS spotcheck in which a provider did not have this posting would not result in negative action if there were no other infractions of the rules. However, a provider who is obtaining ChildNet certification would need to meet this rule in order to pass.

I would encourage you to remove the posting requirement for child care homes from the smoking ban rules. Ideally I'd like to see homes removed altogether and the gambling floors, state fair, veteran's homes etc added in! (Peterson)

COMMENT: I realize that this no smoking law is new but to the daycare providers I know, our homes have always been smoke free. We have this in our policies and never have had a problem even without signs to state it.

Now I can live with a sign in my home but not in my car. I do not wish to block my view in any way especially when I have children in my car. Everyone that has ever rode in my car knows my policy, therefore the no smoking sign will not be hung in my car.

A no smoking sign does not guarantee compliance anyway. (Smith)

COMMENT: I have gone along with the locking up of medications and cleaning supplies and anything else that might be dangerous to children. I have gone along with all the rules for being able to be a registered daycare provider and I really don't mind most of them. Although having to unlock a padlock for an aspirin is a pain, I will do it to keep the kids safe. I already have signs posted at each door showing the way out of my house in case of fire. Any adult is aware of where the doors are. The children I watch are too small to read the signs or

understand them anyway so exactly what did that accomplish other than to trash out the inside of my home with signs? Now you want more signs? This is my home!!!

As far as signs in the vehicle goes...in the windows they could be a bigger danger than smoking by blocking vision. Anywhere else in the vehicle and it will just give the kids something else to pick at and play with. Sounds like a waste of money to me. Yes, hot baked scotch tape, sounds like something I don't have the time to clean up. I don't do transports so this isn't going to be a problem for me personally. (Dailey)

RESPONSE: The Smokefree Air Act has described and defined what the signs must look like, the information they must contain and where they are to be posted. As a Smokefree Air Act designated regulator, the only responsibility that the Department of Human Services has regarding signage is in assessing and reporting noncompliance.